



Izembek

National Wildlife Refuge Land Exchange/Road Corridor

Draft Environmental Impact Statement

Appendix A Public Law-111-11,
Subtitle E



APPENDIX A

**Public Law-111-11, Subtitle E –
Izembek National Wildlife Refuge Land Exchange
March 30, 2009**

- (2) not create risk of harm to or theft or destruction of the resource or the site containing the resource; and
 (3) be in accordance with other applicable laws.

SEC. 6310. REGULATIONS.

As soon as practical after the date of enactment of this Act, the Secretary shall issue such regulations as are appropriate to carry out this subtitle, providing opportunities for public notice and comment.

Notice.
 Public comment.
 16 USC
 470aaa–9.

SEC. 6311. SAVINGS PROVISIONS.

Nothing in this subtitle shall be construed to—

(1) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under the general mining laws, the mineral or geothermal leasing laws, laws providing for minerals materials disposal, or laws providing for the management or regulation of the activities authorized by the aforementioned laws including but not limited to the Federal Land Policy Management Act (43 U.S.C. 1701–1784), Public Law 94–429 (commonly known as the “Mining in the Parks Act”) (16 U.S.C. 1901 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1358), and the Organic Administration Act (16 U.S.C. 478, 482, 551);

(2) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under existing laws and authorities relating to reclamation and multiple uses of Federal land;

(3) apply to, or require a permit for, casual collecting of a rock, mineral, or invertebrate or plant fossil that is not protected under this subtitle;

(4) affect any land other than Federal land or affect the lawful recovery, collection, or sale of paleontological resources from land other than Federal land;

(5) alter or diminish the authority of a Federal agency under any other law to provide protection for paleontological resources on Federal land in addition to the protection provided under this subtitle; or

(6) create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity. No person who is not an officer or employee of the United States acting in that capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this subtitle.

16 USC
 470aaa–10.

SEC. 6312. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

16 USC
 470aaa–11.

Subtitle E—Izembek National Wildlife Refuge Land Exchange

Alaska.
 16 USC 668dd
 note.

SEC. 6401. DEFINITIONS.

In this subtitle:

(1) CORPORATION.—The term “Corporation” means the King Cove Corporation.

(2) FEDERAL LAND.—The term “Federal land” means—

(A) the approximately 206 acres of Federal land located within the Refuge, as generally depicted on the map; and

(B) the approximately 1,600 acres of Federal land located on Sitkinak Island, as generally depicted on the map.

(3) MAP.—The term “map” means each of—

(A) the map entitled “Izembek and Alaska Peninsula National Wildlife Refuges” and dated September 2, 2008; and

(B) the map entitled “Sitkinak Island—Alaska Maritime National Wildlife Refuge” and dated September 2, 2008.

(4) NON-FEDERAL LAND.—The term “non-Federal land” means—

(A) the approximately 43,093 acres of land owned by the State, as generally depicted on the map; and

(B) the approximately 13,300 acres of land owned by the Corporation (including approximately 5,430 acres of land for which the Corporation shall relinquish the selection rights of the Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) as part of the land exchange under section 6402(a)), as generally depicted on the map.

(5) REFUGE.—The term “Refuge” means the Izembek National Wildlife Refuge.

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(7) STATE.—The term “State” means the State of Alaska.

(8) TRIBE.—The term “Tribe” means the Agdaagux Tribe of King Cove, Alaska.

SEC. 6402. LAND EXCHANGE.

Notification.
King Cove
Corporation.

(a) IN GENERAL.—Upon receipt of notification by the State and the Corporation of the intention of the State and the Corporation to exchange the non-Federal land for the Federal land, subject to the conditions and requirements described in this subtitle, the Secretary may convey to the State all right, title, and interest of the United States in and to the Federal land. The Federal land within the Refuge shall be transferred for the purpose of constructing a single-lane gravel road between the communities of King Cove and Cold Bay, Alaska.

(b) COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 AND OTHER APPLICABLE LAWS.—

(1) IN GENERAL.—In determining whether to carry out the land exchange under subsection (a), the Secretary shall—

(A) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) except as provided in subsection (c), comply with any other applicable law (including regulations).

(2) ENVIRONMENTAL IMPACT STATEMENT.—

Deadline.

(A) IN GENERAL.—Not later than 60 days after the date on which the Secretary receives notification under subsection (a), the Secretary shall initiate the preparation of an environmental impact statement required under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) REQUIREMENTS.—The environmental impact statement prepared under subparagraph (A) shall contain—

(i) an analysis of—

(I) the proposed land exchange; and

(II) the potential construction and operation of a road between the communities of King Cove and Cold Bay, Alaska; and

(ii) an evaluation of a specific road corridor through the Refuge that is identified in consultation with the State, the City of King Cove, Alaska, and the Tribe.

(3) COOPERATING AGENCIES.—

(A) IN GENERAL.—During the preparation of the environmental impact statement under paragraph (2), each entity described in subparagraph (B) may participate as a cooperating agency.

(B) AUTHORIZED ENTITIES.—An authorized entity may include—

(i) any Federal agency that has permitting jurisdiction over the road described in paragraph (2)(B)(i)(II);

(ii) the State;

(iii) the Aleutians East Borough of the State;

(iv) the City of King Cove, Alaska;

(v) the Tribe; and

(vi) the Alaska Migratory Bird Co-Management Council.

(c) VALUATION.—The conveyance of the Federal land and non-Federal land under this section shall not be subject to any requirement under any Federal law (including regulations) relating to the valuation, appraisal, or equalization of land.

(d) PUBLIC INTEREST DETERMINATION.—

(1) CONDITIONS FOR LAND EXCHANGE.—Subject to paragraph (2), to carry out the land exchange under subsection (a), the Secretary shall determine that the land exchange (including the construction of a road between the City of King Cove, Alaska, and the Cold Bay Airport) is in the public interest.

(2) LIMITATION OF AUTHORITY OF SECRETARY.—The Secretary may not, as a condition for a finding that the land exchange is in the public interest—

(A) require the State or the Corporation to convey additional land to the United States; or

(B) impose any restriction on the subsistence uses (as defined in section 803 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3113)) of waterfowl by rural residents of the State.

Waterfowl.

(e) KINZAROFF LAGOON.—The land exchange under subsection (a) shall not be carried out before the date on which the parcel of land owned by the State that is located in the Kinzaroff Lagoon has been designated by the State as a State refuge, in accordance with the applicable laws (including regulations) of the State.

(f) DESIGNATION OF ROAD CORRIDOR.—In designating the road corridor described in subsection (b)(2)(B)(ii), the Secretary shall—

(1) minimize the adverse impact of the road corridor on the Refuge;

(2) transfer the minimum acreage of Federal land that is required for the construction of the road corridor; and

(3) to the maximum extent practicable, incorporate into the road corridor roads that are in existence as of the date of enactment of this Act.

(g) **ADDITIONAL TERMS AND CONDITIONS.**—The land exchange under subsection (a) shall be subject to any other term or condition that the Secretary determines to be necessary.

SEC. 6403. KING COVE ROAD.

(a) **REQUIREMENTS RELATING TO USE, BARRIER CABLES, AND DIMENSIONS.**—

(1) **LIMITATIONS ON USE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), any portion of the road constructed on the Federal land conveyed pursuant to this subtitle shall be used primarily for health and safety purposes (including access to and from the Cold Bay Airport) and only for noncommercial purposes.

(B) **EXCEPTIONS.**—Notwithstanding subparagraph (A), the use of taxis, commercial vans for public transportation, and shared rides (other than organized transportation of employees to a business or other commercial facility) shall be allowed on the road described in subparagraph (A).

(C) **REQUIREMENT OF AGREEMENT.**—The limitations of the use of the road described in this paragraph shall be enforced in accordance with an agreement entered into between the Secretary and the State.

(2) **REQUIREMENT OF BARRIER CABLE.**—The road described in paragraph (1)(A) shall be constructed to include a cable barrier on each side of the road, as described in the record of decision entitled “Mitigation Measure MM-11, King Cove Access Project Final Environmental Impact Statement Record of Decision” and dated January 22, 2004, unless a different type barrier is required as a mitigation measure in the Record of Decision for Final Environmental Impact Statement required in section 6402(b)(2).

(3) **REQUIRED DIMENSIONS AND DESIGN FEATURES.**—The road described in paragraph (1)(A) shall—

(A) have a width of not greater than a single lane, in accordance with the applicable road standards of the State;

(B) be constructed with gravel;

(C) be constructed to comply with any specific design features identified in the Record of Decision for Final Environmental Impact Statement required in section 6402(b)(2) as Mitigation Measures relative to the passage and migration of wildlife, and also the exchange of tidal flows, where applicable, in accordance with applicable Federal and State design standards; and

(D) if determined to be necessary, be constructed to include appropriate safety pullouts.

(b) **SUPPORT FACILITIES.**—Support facilities for the road described in subsection (a)(1)(A) shall not be located within the Refuge.

(c) **FEDERAL PERMITS.**—It is the intent of Congress that any Federal permit required for construction of the road be issued

Deadline.

or denied not later than 1 year after the date of application for the permit.

(d) **APPLICABLE LAW.**—Nothing in this section amends, or modifies the application of, section 1110 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3170).

(e) **MITIGATION PLAN.**—

(1) **IN GENERAL.**—Based on the evaluation of impacts determined through the completion of the environmental impact statement under section 6402(b)(2), the Secretary, in consultation with the entities described in section 6402(b)(3)(B), shall develop an enforceable mitigation plan.

(2) **CORRECTIVE MODIFICATIONS.**—The Secretary may make corrective modifications to the mitigation plan developed under paragraph (1) if—

(A) the mitigation standards required under the mitigation plan are maintained; and

(B) the Secretary provides an opportunity for public comment with respect to any proposed corrective modification.

(3) **AVOIDANCE OF WILDLIFE IMPACTS.**—Road construction shall adhere to any specific mitigation measures included in the Record of Decision for Final Environmental Impact Statement required in section 6402(b)(2) that—

(A) identify critical periods during the calendar year when the refuge is utilized by wildlife, especially migratory birds; and

(B) include specific mandatory strategies to alter, limit or halt construction activities during identified high risk periods in order to minimize impacts to wildlife, and

(C) allow for the timely construction of the road.

(4) **MITIGATION OF WETLAND LOSS.**—The plan developed under this subsection shall comply with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) with regard to minimizing, to the greatest extent practicable, the filling, fragmentation or loss of wetlands, especially intertidal wetlands, and shall evaluate mitigating effect of those wetlands transferred in Federal ownership under the provisions of this subtitle.

SEC. 6404. ADMINISTRATION OF CONVEYED LANDS.

(1) **FEDERAL LAND.**—Upon completion of the land exchange under section 6402(a)—

(A) the boundary of the land designated as wilderness within the Refuge shall be modified to exclude the Federal land conveyed to the State under the land exchange; and

(B) the Federal land located on Sitkinak Island that is withdrawn for use by the Coast Guard shall, at the request of the State, be transferred by the Secretary to the State upon the relinquishment or termination of the withdrawal.

(2) **NON-FEDERAL LAND.**—Upon completion of the land exchange under section 6402(a), the non-Federal land conveyed to the United States under this subtitle shall be—

(A) added to the Refuge or the Alaska Peninsula National Wildlife Refuge, as appropriate, as generally depicted on the map; and

16 USC 1132
note.

(B) administered in accordance with the laws generally applicable to units of the National Wildlife Refuge System.
(3) WILDERNESS ADDITIONS.—

(A) IN GENERAL.—Upon completion of the land exchange under section 6402(a), approximately 43,093 acres of land as generally depicted on the map shall be added to—

(i) the Izembek National Wildlife Refuge Wilderness; or

(ii) the Alaska Peninsula National Wildlife Refuge Wilderness.

(B) ADMINISTRATION.—The land added as wilderness under subparagraph (A) shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and other applicable laws (including regulations).

SEC. 6405. FAILURE TO BEGIN ROAD CONSTRUCTION.

(a) NOTIFICATION TO VOID LAND EXCHANGE.—If the Secretary, the State, and the Corporation enter into the land exchange authorized under section 6402(a), the State or the Corporation may notify the Secretary in writing of the intention of the State or Corporation to void the exchange if construction of the road through the Refuge has not begun.

(b) DISPOSITION OF LAND EXCHANGE.—Upon the latter of the date on which the Secretary receives a request under subsection (a), and the date on which the Secretary determines that the Federal land conveyed under the land exchange under section 6402(a) has not been adversely impacted (other than any nominal impact associated with the preparation of an environmental impact statement under section 6402(b)(2)), the land exchange shall be null and void.

(c) RETURN OF PRIOR OWNERSHIP STATUS OF FEDERAL AND NON-FEDERAL LAND.—If the land exchange is voided under subsection (b)—

(1) the Federal land and non-Federal land shall be returned to the respective ownership status of each land prior to the land exchange;

(2) the parcel of the Federal land that is located in the Refuge shall be managed as part of the Izembek National Wildlife Refuge Wilderness; and

(3) each selection of the Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that was relinquished under this subtitle shall be reinstated.

SEC. 6406. EXPIRATION OF LEGISLATIVE AUTHORITY.

(a) IN GENERAL.—Any legislative authority for construction of a road shall expire at the end of the 7-year period beginning on the date of the enactment of this subtitle unless a construction permit has been issued during that period.

(b) EXTENSION OF AUTHORITY.—If a construction permit is issued within the allotted period, the 7-year authority shall be extended for a period of 5 additional years beginning on the date of issuance of the construction permit.

(c) EXTENSION OF AUTHORITY AS RESULT OF LEGAL CHALLENGES.—

(1) IN GENERAL.—Prior to the issuance of a construction permit, if a lawsuit or administrative appeal is filed challenging

the land exchange or construction of the road (including a challenge to the NEPA process, decisions, or any required permit process required to complete construction of the road), the 7-year deadline or the five-year extension period, as appropriate, shall be extended for a time period equivalent to the time consumed by the full adjudication of the legal challenge or related administrative process.

(2) INJUNCTION.—After a construction permit has been issued, if a court issues an injunction against construction of the road, the 7-year deadline or 5-year extension, as appropriate, shall be extended for a time period equivalent to time period that the injunction is in effect.

(d) APPLICABILITY OF SECTION 6405.—Upon the expiration of the legislative authority under this section, if a road has not been constructed, the land exchange shall be null and void and the land ownership shall revert to the respective ownership status prior to the land exchange as provided in section 6405.

TITLE VII—NATIONAL PARK SERVICE AUTHORIZATIONS

Subtitle A—Additions to the National Park System

SEC. 7001. PATERSON GREAT FALLS NATIONAL HISTORICAL PARK, NEW JERSEY. 16 USC 410*lll*.

(a) DEFINITIONS.—In this section:

(1) CITY.—The term “City” means the City of Paterson, New Jersey.

(2) COMMISSION.—The term “Commission” means the Paterson Great Falls National Historical Park Advisory Commission established by subsection (e)(1).

(3) HISTORIC DISTRICT.—The term “Historic District” means the Great Falls Historic District in the State.

(4) MANAGEMENT PLAN.—The term “management plan” means the management plan for the Park developed under subsection (d).

(5) MAP.—The term “Map” means the map entitled “Paterson Great Falls National Historical Park—Proposed Boundary”, numbered T03/80,001, and dated May 2008.

(6) PARK.—The term “Park” means the Paterson Great Falls National Historical Park established by subsection (b)(1)(A).

(7) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(8) STATE.—The term “State” means the State of New Jersey.

(b) PATERSON GREAT FALLS NATIONAL HISTORICAL PARK.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), there is established in the State a unit of the National Park System to be known as the “Paterson Great Falls National Historical Park”.

U.S. Department of Interior
U.S. Fish & Wildlife Service

<http://www.fws.gov>
<http://izembek.fws.gov/eis.htm>

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March 2012

